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8 *John F. Barton, Jr., and all others*
similarly situated.

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14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
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17 DALE MILLER and JOHN F.
18 BARTON, JR., on behalf of themselves
and all others similarly situated,

19 Plaintiffs,

20 v.

21 METROPOLITAN LIFE INSURANCE
22 COMPANY, a New York Corporation;
and DOES 1-10, inclusive,

23 Defendants.
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) Case No. 2:17-cv-2668-PSG-FFM

) Assigned to Hon. Philip S. Gutierrez

) **FIRST AMENDED CLASS ACTION**
COMPLAINT

) **1. BREACH OF CONTRACT**

) **2. FRAUD**

) **JURY TRIAL DEMANDED**

1 Plaintiffs DALE MILLER (“MR. MILLER”) and JOHN F. BARTON, JR.
2 (“MR. BARTON”), on behalf of themselves and all others similarly situated, allege
3 the following:

4 **JURISDICTION AND VENUE**

5 1. This Court has diversity jurisdiction over this class action pursuant to 28
6 U.S.C. § 1332 as amended by the Class Action Fairness Act of 2005 because the
7 matter in controversy exceeds \$5,000,000, exclusive of interest and costs, and is a
8 class action in which some members of the class are citizens of different states than
9 the Defendants. *See* 28 U.S.C. § 1332(d)(2)(A).

10 2. This Court also has personal jurisdiction over Defendants because
11 Defendants are authorized to do business, and currently do business, in this state.

12 3. Venue is proper in this jurisdiction pursuant to 28 U.S.C. § 1391 because
13 Defendant METROPOLITAN LIFE INSURANCE COMPANY has conducted
14 business in this District and is subject to personal jurisdiction and a substantial
15 portion of the conduct complained of herein occurred in this District.

16 **PARTIES**

17 4. Plaintiff, MR. MILLER, at all relevant times herein, was and is a citizen and
18 resident of the State of California. MR. MILLER entered into a contract with
19 METROPOLITAN LIFE INSURANCE COMPANY (hereafter, referred to as
20 “MET LIFE”) on or about March 22, 2000, when he accepted MET LIFE’s offer for
21 a Group Variable Universal Life (GVUL) policy.

22 5. Plaintiff, MR. BARTON, at all relevant times herein, was and is a citizen and
23 resident of the State of Colorado. MR. BARTON entered into a contract with MET
24 LIFE in or about March 2000, when he accepted MET LIFE’s offer for a GVUL
25 policy.

26 6. Defendant METROPOLITAN LIFE INSURANCE COMPANY is a New
27 York corporation, with its corporate headquarters located in the State of New York.
28 METROPOLITAN LIFE INSURANCE COMPANY also conducts a substantial

1 amount of business nationwide, including in California.

2 7. Plaintiffs are unaware of the true names and capacity of the defendants sued
3 as DOES 1-10, and therefore sue these defendants by fictitious names. Plaintiffs
4 will seek leave to amend this Complaint when and if the true identities of these
5 DOE defendants are discovered. Plaintiffs are informed and believe and thereon
6 allege that each of the defendants designated as a DOE is responsible in some
7 manner for the acts and occurrences alleged herein, whether such acts or
8 occurrences were committed intentionally, negligently, recklessly or otherwise, and
9 that each said DOE defendant thereby proximately caused injuries and damages to
10 Plaintiffs and the Class as herein alleged, and is thus liable for Plaintiffs' and the
11 Class's injuries.

12 8. At all times herein mentioned, Defendants, and each of them, were the
13 agents, principals, servants, employees, and subsidiaries of each of the remaining
14 Defendants, and were at all times acting within the purpose and scope of such
15 agency, service, and employment, and directed, consented, ratified, permitted,
16 encouraged, and approved the acts of each remaining defendant.

17 **PRELIMINARY ALLEGATIONS**

18 9. This action arises out of MET LIFE's practice of improperly charging certain
19 of their non-smoking insureds smoker rates, which are higher than non-smoker
20 rates, for their life insurance premiums, when the insureds did not enroll as
21 smokers, and never indicated to MET LIFE they were smokers.

22 10. MR. MILLER is currently a commercial airline pilot with United Airlines
23 ("United"), and he has been employed as a pilot with United since 1990. MR.
24 MILLER is also a member of the Airline Pilots Association (hereafter "ALPA"), the
25 union for airline pilots with United.

26 11. As a pilot with United, MR. MILLER received several employee benefits
27 including group rates on insurance services being offered by MET LIFE. MR.
28 MILLER has taken advantage of these benefits after he first became employed with

1 United in 1990 and has maintained some form of life insurance with MET LIFE,
2 throughout his employment there.

3 12. When MR. MILLER first enrolled for life insurance services with MET
4 LIFE, he was enrolled in either an Optional Term Life insurance (OTL) program or
5 a Group Universal Life policy (GUL) program. In the event MET LIFE has asked
6 MR. MILLER his status as a smoker or non-smoker, he would have indicated non-
7 smoker status, as MR. MILLER has always been a non-smoker during the
8 applicable periods, including the five-year look back periods.

9 13. In or about March of 2000, MR. MILLER received notice that his life
10 insurance policy with MET LIFE would be changing from the OTL or GUL policy,
11 to a Group Variable Universal Life (GVUL) policy.

12 14. On or about March 15, 2000, MR. MILLER completed a Group Variable
13 Universal Life Special Enrollment Change Form ("GVUL enrollment form"), as he
14 was instructed to do in order to ensure that his life insurance coverage would
15 continue.

16 15. Section 1 of the GVUL enrollment form is labeled "Smoker/ Non-Smoker
17 Status Change." This section requires enrollees to select from the following status
18 changes, "From Smoker to Non-Smoker" and "From Non-Smoker to Smoker."
19 Smoker is defined on the form as "anyone who has used a tobacco product within
20 the past 12 months. Tobacco use includes cigarettes, cigars, pipes, chewing tobacco
21 and snuff." (See Exhibit "A"). As MR. MILLER has never been a smoker during
22 the applicable periods, including the five-year look back periods, he logically left
23 this section blank, as the only two options did not apply to him because he was not
24 changing his status.

25 16. MR. MILLER also left the sections labeled "Section 2 Pilots Life Insurance
26 Coverage Change," "Section 3 Pilot's Extra Monthly Contribution Change," and
27 "Section 5 Spouse's Extra Monthly Contribution Change" blank, because they also
28 did not apply to him.

1 17. On or about March 22, 2000, MET LIFE received MR. MILLER's GVUL
2 enrollment form. Soon thereafter, MET LIFE began to charge MR. MILLER on a
3 monthly basis for the GVUL policy as a smoker per its apparently erroneous default
4 policy when no change in smoking status box was selected on the GVUL
5 enrollment form.

6 18. MET LIFE charged MR. MILLER the smoker rate at least since his coverage
7 began under the GVUL policy.

8 19. From the time of his initial enrollment, MR. MILLER never received any
9 notice or indication that he was being charged the smoker rate. This information
10 was never provided in the annual policy statements MR. MILLER received, nor was
11 it provided in any other communication MR. MILLER received from MET LIFE. It
12 was not until recently, when MR. MILLER decided to reduce his GVUL policy
13 coverage, that he determined he had been charged the smoker rate.

14 20. In or about October 2016, MR. MILLER decided to change his GVUL policy
15 coverage because he felt he no longer needed as much coverage as he had before. In
16 order to change his coverage, MR. MILLER accessed his policy coverage through
17 the MET LIFE Insurance link on the United Airlines Employee benefits website.

18 21. Once on the proper website MR. MILLER answered a variety of questions
19 related to his personal life and the level of coverage he desired. When entering his
20 personal information MR. MILLER was prompted to answer the question of "Have
21 you smoked cigarettes, pipes, or cigars or used tobacco in any form in the past 5
22 years?" MR. MILLER selected "NO" for his response and then proceeded to fill out
23 the rest of the online form.

24 22. Once the form was completed MR. MILLER was shocked to find, when
25 looking at the price comparison, that his monthly premium should have been
26 drastically lower than the current amount he had been paying for the last several
27 years. MR. MILLER quickly called MET LIFE customer service to ensure he had
28 filled out the online form correctly.

23. The MET LIFE customer service agent assured MR. MILLER he had correctly filled out the online form and the reduction in premium charges was due to the fact that MR. MILLER was changing his status to a non-smoker. MR. MILLER informed the agent that he was not a smoker and that he had never been one during the applicable periods, including the five-year look back periods. The agent then informed MR. MILLER that he had been labeled as a smoker for purposes of GVUL coverage since his enrollment back in March of 2000.

24. MR. MILLER was obviously shocked by this information and over the course of several months contacted various MET LIFE representatives, as well as union representatives from the ALPA to find out why he had been considered a smoker for GVUL purposes and how he could be refunded for the premium overcharges he had incurred for so many years.

25. On or about December 7, 2016, MR. MILLER received a letter from MET LIFE stating, "Metropolitan Life Insurance Company has processed your request to change to non-smoking rates. Your new monthly premium is \$344.92... Your certificate was issued on June 1, 2000 **with smoker rates set as the default because you did not indicate your smoking status during the initial enrollment.** We cannot refund any premium difference that may have occurred back in time. A copy of your enrollment form is attached. Any other enrollment materials from 2000 are outside our document retention guidelines and no longer available." (See Exhibit "B")(Emphasis added).

26. As a comparison MR. MILLER's last pay stub before the non-smoker status was applied shows a deduction of \$420.38 for his GVUL Employee coverage. The new monthly premium of \$344.92 provides MR. MILLER with the exact same level of coverage he was receiving before. This amounts to a 19.7% overcharge in premium payments being incurred on a monthly basis.

27. MR. MILLER has paid his GVUL premium on time and in full, through an automatic deduction from his paycheck for the last 16 plus years. The GVUL coverage is based on a percentage of MR. MILLER's annual salary and as his

1 salary has increased over the years, so has his GVUL coverage and thus his
2 premiums.

3 28. At this time the exact amount of overcharges on the premiums is not known
4 but the overcharges are substantial given that they have taken place over a 16 year
5 period.

6 29. MR. BARTON recently learned from MR. MILLER that MET LIFE had
7 been charging MR. MILLER smoker rates for his premiums on the GVUL policy,
8 even though MR. MILLER had never been a smoker during the applicable periods,
9 including the five-year look back periods.

10 30. After speaking to MR. MILLER, MR. BARTON became concerned that
11 MET LIFE had also been charging him smoker rates for premiums on his own
12 GVUL policy. For that reason, MR. BARTON looked up the premium rates he has
13 been charged for his own GVUL policy with MET LIFE, to confirm whether this
14 was true. MR. BARTON discovered he too has been charged smoker rates for the
15 premiums on his own GVUL policy, even though he has never been a smoker
16 during the applicable periods, including the five-year look back periods.

17 31. Mr. BARTON then requested multiple times to a MET LIFE representative
18 that MET LIFE provide him with the GVUL enrollment form he would have filled
19 out for enrollment in his own GVUL policy. In response to his multiple requests,
20 MET LIFE has not agreed to provide MR. BARTON with a copy of his GVUL
21 enrollment form.

22 32. In the event MET LIFE had asked MR. BARTON his status as a smoker or
23 non-smoker, he would have indicated he was a non-smoker, as MR. BARTON was
24 always a non-smoker during the applicable periods, including the five-year look
25 back periods.

26 33. Upon information and belief, Plaintiffs allege MET LIFE overcharged
27 similarly situated GVUL policy holders employed by United, by categorizing them
28 as smokers if they failed to complete Section 1 of the GVUL enrollment form.

34. By accepting the GVUL enrollment form as completed by the enrollees and deducting the premium amount from the policy holders on a recurring basis, MET LIFE entered into binding contracts with MR. MILLER, MR. BARTON, and members of the putative class.

35. At all times mentioned herein, MR. MILLER, MR. BARTON, and all those similarly situated relied on the fact that they had never told MET LIFE they were a smoker for purposes of the OTL or GUL and therefore, did not select a status change for Section 1 of their GVUL enrollment form.

36. By setting the smoker rate as the default despite no indication from enrollees they were smokers for purposes of the OTL or GUL, MET LIFE breached its contracts with MR. MILLER, MR. BARTON, and members of the putative class. Furthermore, this action constitutes a fraudulent scheme by which MET LIFE overcharged policy holders based on a status never indicated by the enrollee.

37. MET LIFE continues to breach its contracts with members of the putative class, and engage in a fraudulent scheme, by continuing to enforce, bill, and demand on a regular basis from policy holders a higher smoker rate premium for GVUL coverage, when, in fact, the policy holders never indicated to MET LIFE they were smokers, so non-smoker status and applicable rates should apply.

CLASS ACTION ALLEGATIONS

38. Plaintiffs MR. MILLER and MR. BARTON bring this action on behalf of themselves and all others similarly situated, as members of the proposed California and Nationwide plaintiff class (collectively hereafter the "Class") defined as follows:

California Class: All persons who resided in California at the time of the offer, or who currently reside in California, who entered into a contract with MET LIFE in response to a Group Variable Universal Life insurance offer in replacement of their Optional Term Life or Group Universal Life policy, wherein the enrollment form provided for a change in smoker status section which was left blank, and where

MET LIFE charged smoker rates despite the class members never having enrolled as smokers.

Nationwide Class: All persons who resided in the United States at the time of the offer, who entered into a contract with MET LIFE in response to a Group Variable Universal Life insurance offer in replacement of their Optional Term Life or Group Universal Life policy, wherein the enrollment form provided for a change in smoker status section which was left blank, and where MET LIFE charged smoker rates despite the class members never having enrolled as smokers.

Specifically excluded from the proposed Classes are Defendants, any entities in which Defendants have a controlling interest, and the officers, directors, affiliates, legal representatives, successors, subsidiaries and/or assigns of Defendants, and any Judge who may be assigned to this matter.

39. This action is brought and may be properly maintained as a class action pursuant to the provisions of Federal Rule of Civil Procedure 23(a)(1)-(4) and 23(b)(1)-(3). This action satisfies the numerosity, typicality, adequacy, predominance and superiority requirements of those provisions.

40. [Fed. R. Civ. P. 23(a)(1)] The Class is so numerous that the individual joinder of all of its members is impractical. While the exact number and identities of Class members are unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery, Plaintiffs are informed and believe the Class includes many thousands of members.

41. [Fed. R. Civ. P. 23(a)(2)] Common questions of fact and law exist as to all members of the Class which predominate over any questions affecting only individual members of the Class. These common legal and factual questions, which do not vary from class member to class member, and which may be determined without reference to the individual circumstances of any class member, include, but are not limited to, the following:

- 1 A. Whether Defendants entered into valid contracts with members of the
- 2 Class;
- 3 B. Whether Defendants breached the contracts with the Class when it
- 4 charged the payment of premiums based on the smoker rate being set
- 5 as the default when no status change was selected on the Group
- 6 Variable Universal Life Special Enrollment Change Form;
- 7 C. Whether Defendants committed fraud through charging smoker rates to
- 8 individuals who never enrolled as smokers; and
- 9 D. The nature and extent of damages and other remedies to which the
- 10 conduct of Defendants entitles the Class members.

11 42. [Fed. R. Civ. P. 23(a)(3)] Plaintiffs' claims are typical of the claims of the

12 members of the Class. Plaintiffs and all members of the Class have sustained injury

13 and are facing harm arising out of Defendants' common course of conduct as

14 complained of herein. The losses of each member of the Class were caused directly

15 by Defendants' wrongful conduct as alleged herein.

16 43. [Fed. R. Civ. P. 23(a)(4)] Plaintiffs will fairly and adequately protect the

17 interests of the members of the Class. Plaintiffs have retained attorneys

18 experienced in the prosecution of class actions, including complex consumer and

19 mass tort litigation.

20 44. [Fed. R. Civ. P. 23(b)(3)] A class action is superior to other available

21 methods of fair and efficient adjudication of this controversy, since individual

22 litigation of the claims of all Class members is impracticable. Even if every Class

23 member could afford individual litigation, the court system could not. It would be

24 unduly burdensome to the courts in which individual litigation of numerous issues

25 would proceed. Individualized litigation would also present the potential for

26 varying, inconsistent, or contradictory judgments and would magnify the delay and

27 expense to all parties and to the court system resulting from multiple trials of the

28 same complex factual issues. By contrast, the conduct of this action as a class

action, with respect to some or all of the issues presented herein, presents fewer

1 management difficulties, conserves the resources of the parties and of the court
2 system, and protects the rights of each Class member.

3 45. [Fed. R. Civ. P. 23(b)(1)(A)] The prosecution of separate actions by
4 thousands of individual Class members would create the risk of inconsistent or
5 varying adjudications with respect to, among other things, whether a valid contract
6 existed, and if so, the terms of such contract.

7 46. [Fed. R. Civ. P. 23(b)(1)(B)] The prosecution of separate actions by
8 individual class members would create a risk of adjudications with respect to them
9 that would, as a practical matter, substantially impair or impede the ability of such
10 non-party Class members to protect their interests.

11 47. [Fed. R. Civ. P. 23(b)(2)] Defendants have acted or refused to act in respects
12 generally applicable to the Class, thereby making appropriate final and injunctive
13 relief with regard to the members of the Class as a whole.

14 CLAIMS FOR RELIEF

15 FIRST CLAIM FOR RELIEF

16 (Breach of Contract)

17 By Plaintiffs and Putative Class Against All Defendants)

18 48. Plaintiffs and the Class incorporate by reference each preceding paragraph as
19 though fully set forth herein.

20 49. Plaintiffs and the Class entered into contracts with MET LIFE for life
21 insurance, pursuant to the terms and conditions of MET LIFE's Optional Term Life
22 (OTL) or Group Universal Life (GUL) policy and MET LIFE's Group Universal
23 Variable Life (GVUL) policy offers.

24 50. Specifically, the GVUL policy enrollment form provided for a smoker status
25 change only, with no indication to the policy holder that MET LIFE had defaulted
26 them to smoker status.
27
28

1 51. Plaintiffs and the Class members performed all material terms required to
2 accept the offer by completing all sections of the GVUL enrollment form that
3 applied and returning the GVUL enrollment form to MET LIFE.

4 52. Plaintiffs and the Class members performed all material terms required by the
5 contracts by making monthly premium payments.

6 53. Defendants breached the contracts when they charged Plaintiffs and the Class
7 members smoker rates when they should have been charged non-smoker rates.

8 54. Defendants continue to breach the contracts by, on a monthly basis, requiring
9 the Class members to continue to make premium payments at higher rates based on
10 the defaulted smoker status and continue to deny repayment of past overcharges.

11 55. As a result of the foregoing, Plaintiffs and the Class members have been
12 damaged in an amount to be proven at trial.

13 **SECOND CLAIM FOR RELIEF**

14 **(Fraud)**

15 **(By Plaintiffs and Putative Class Against All Defendants)**

16 56. Plaintiffs and the Class incorporate by reference each preceding paragraph as
17 though fully set forth herein.

18 57. Upon information and belief, MET LIFE concealed and suppressed material
19 facts concerning the policy status of Plaintiffs and Class members when their policy
20 was changed from OTL or GUL to GVUL, and charged Class members smoker
21 rates when they should have been charged non-smoker rates. Defendants
22 accomplished their scheme by establishing an internal policy of designating as
23 smokers those individuals who left blank the smoker status change section of the
24 GVUL enrollment form, even though they knew or should have known that such
25 policy would result in overcharging Plaintiffs and Class members as smokers when
26 they never had enrolled as smokers.

27 58. MET LIFE ensured that the details of the fraudulent scheme would not be
28 revealed to their insureds by failing to disclose each insured's smoker status in any

1 annual policy report or statement. MET LIFE engaged in this fraudulent
2 concealment at the expense of Plaintiffs and Class members.

3 59. Plaintiffs and Class members reasonably relied on MET LIFE's deceptive
4 conduct and paid the overcharges as automatic deductions from their paychecks.
5 Plaintiffs and Class members had no way of discerning the fraud absent taking the
6 extraordinary step to check whether their paycheck deduction actually matched the
7 amount that was listed on MET LIFE's policy rate tables or by calling the company
8 to check their status.

9 60. Plaintiffs and Class members were not aware of the concealed and
10 misrepresented material facts referenced above, and would not have acted as they
11 did had they known the truth regarding their premium payments.

12 61. As a direct and proximate result of Defendants' fraudulent scheme, Plaintiffs
13 and Class members sustained damages. They significantly over paid for premiums
14 associated with their MET LIFE GVUL insurance coverage.

15 62. Defendants are liable to Plaintiffs and Class members for damages in an
16 amount to be proven at trial.

17 63. Moreover, because Defendants acted wantonly, maliciously, oppressively,
18 recklessly, deliberately, and with intent to defraud Plaintiffs and Class members for
19 the purpose of enriching themselves at Plaintiffs' and Class members' detriment,
20 Defendants' conduct warrants substantial punitive and exemplary damages in an
21 amount to be determined at trial.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiffs, each individually and on behalf of all other
24 persons similarly situated, pray for judgment against MET LIFE as follows:

- 25 1. An Order certifying the Class and any sub-classes thereof that the
26 Court may deem appropriate, and appointing Plaintiffs DALE MILLER and JOHN
27 F. BARTON, JR., and their counsel, to represent the Class;
- 28 2. An award of general damages according to proof;
3. Injunctive relief;

4. Attorneys' fees;
5. Exemplary and punitive damages;
6. Costs of suit; and
7. Any other relief the Court deems proper.

DATED: June 16, 2017

Respectfully submitted,

KIRTLAND & PACKARD LLP

By: /s/ Joshua A. Fields

MICHAEL L. KELLY
BEHRAM V. PAREKH
JOSHUA A. FIELDS

*Counsel for Plaintiff Dale Miller,
John F. Barton, Jr., and all others
similarly situated.*

LAW OFFICES
KIRTLAND & PACKARD LLP

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury as to all claims so triable.

DATED: June 16, 2017

Respectfully submitted,

KIRTLAND & PACKARD LLP

By: /s/ Joshua A. Fields

MICHAEL L. KELLY
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